EXHIBIT 1

1   UNITED STATES DISTRICT COURT

2   NORTHERN DISTRICT OF CALIFORNIA

3   SAN JOSE DIVISION

4

5   FACEBOOK, INC.   :

6   Plaintiff,   :

7   :

8   v.   :

9   :

10   POWER VENTURES, INC. d/b/a:

11   POWER.COM, a California   :

12   corporation; POWER   :   Case No.

13   VENTURES, INC. a Cayman   :   5:08-CV-05780

14   Island Corporation, STEVE :   JW (HRL)

15   VACHANI, an individual;   :

16   DOE 1, d/b/a POWER.COM, an:

17   individual and/or business:

18   entity of unknown nature; :

19   DOES 2 through 25,   :

20   inclusive, individuals   :

21   and/or business entities   :

22   of unknown nature,   :

23   Defendants.   :

24   _____

25   HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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1   Videotaped Deposition of STEVEN VACHANI

2   taken on behalf of the Plaintiff at the offices of

3   BURSOR & FISHER, P.A., 369 Lexington Avenue, New

4   York, New York, on Wednesday, July 20, 2011,

5   commencing at 9:47 in the forenoon before PATRICIA

6   MULLIGAN CARRUTHERS, a Certified Court Reporter and

7   Notary Public of the State of New Jersey and Notary

8   Public of the State of New York.

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09:47 1   THE VIDEOGRAPHER: I'm the video

09:48 2   operator, Peter Ledwith of Barkley Reporting.

09:48 3   Today's date is July 20th, 2011. The time is 9:47

09:48 4   a.m. We're here at the offices of Bursor and Fisher

09:48 5   located at 369 Lexington Avenue, New York, New York

09:48 6   to take the videotaped deposition of Steve Vachani

09:48 7   in the matter of Facebook, Inc., v. Power Ventures,

09:49 8   Inc., in the Northern District of California.

09:49 9   Counsel, please, identify themselves whom they

09:49 10 represent.

09:49 11   MR. COOPER: Monty Cooper of the

09:49 12 law firm Orrick, Herrington & Sutcliff representing

09:49 13 the plaintiff Facebook, Inc.

09:49 14   MR. BURSOR: Scott Bursor from

09:49 15 Bursor & Fisher from the -- for the defendant Steve

09:49 16 Vachani and Power Ventures.

       17 S T E V E N   V A C H A N I,

       18   2425 B Channing Way 216,

       19   Berkeley, California 94704,

       20   having been first duly sworn according

09:50 21   to law, testifies as follows:

09:50 22   (Whereupon, there is a discussion

       23 held off the record.)

       24   THE VIDEOGRAPHER: 9:49, off the

09:50 25 record.

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10:13 1   have reflected the corporate structure of the

10:13 2   company.

10:13 3   A.   Correct.

10:13 4   Q.   Do you have any documents that

10:13 5   reflect the employees and their roles?

10:13 6   A.   Yeah.

10:13 7   Q.   And what type of documents are

10:13 8   those?

10:13 9   A.   Those would be standard employment

10:13 10   contracts, and NDAs, and standard proprietary

10:13 11   invention agreements.

10:13 12   Q.   Do you have any document that,

10:13 13   like, provides a table of the roles of the

10:13 14   employees and who their supervisors are?

10:13 15   A.   I could -- I would -- I could find

10:13 16   that.

10:13 17   Q.   Is power.com still operating?

10:13 18   A.   The company is still operational.

10:13 19   Q.   How many employees are there

10:13 20   currently?

10:13 21   A.   There are currently no -- no

10:13 22   employees for the company.

10:13 23   Q.   Are you the sole --

10:14 24   A.   I'm the sole person at the company

10:14 25   right now.

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10:15   1   A.   No.

10:15   2   Q.   Did it formerly?

10:15   3   A.   Yes, did it.

10:15   4   Q.   Where did it formerly operate out

10:15   5   of?

10:15   6   A.   It was based in -- in the city of

10:15   7   Rio de Janeiro was the primary offices, and there

10:15   8   was secondary offices we had in Salvador. It's in

10:15   9   Brazil, also.

10:15   10   Q.   Is that a short name for it --

10:15   11   A.   No. It's the city.

10:15   12   Q.   And where was the company -- Where

10:15   13   is the company incorporated?

10:15   14   A.   It's incorporated in Cayman

10:15   15   Islands and in the United States.

10:15   16   Q.   Where in the US?

10:15   17   A.   Delaware.

10:15   18   Q.   Do you pay a Delaware franchise

10:16   19   tax annually?

10:16   20   A.   Yes, we do.

10:16   21   Q.   Pay any type of franchise tax in

10:16   22   the Cayman Islands?

10:16   23   A.   Yeah. There are -- There are

10:16   24   taxes paid. Correct.

10:16   25   Q.   From where is the revenue

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11:03 1   two forms, either it was done through E mail or

11:03 2   there would be text documents that would -- that

11:03 3   would -- If in some products there would be -- that

11:03 4   required more definition, there would be more

11:03 5   formal requirement documents that would be in the

11:03 6   form of a text form. That's correct.

11:03 7   Q.   All right. So some of the

11:03 8   development and functionality was described in

11:03 9   internal E mails amongst the employees?

11:03 10   A.   Correct.

11:03 11   Q.   Is that -- Are those E mails

11:03 12   indexed anywhere?

11:03 13   A.   Typically when -- during the

11:03 14   declarations, I went through every E mail that

11:03 15   related to Facebook and I believe all those were

11:03 16   provided to -- in the declarations, provided to our

11:03 17   lawyer.

11:03 18   Q.   I understand we'll get to the

11:04 19   product issues, but all I'm asking about are all

11:04 20   the E mails that were ever generated describing the

11:04 21   functionality of PowerScript, are they maintained

11:04 22   anywhere anymore?

11:04 23   A.   They are maintained I would -- in

11:04 24   my E mailbox.

11:04 25   Q.   Would -- What E mail service was

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11:04 1   used internally at power.com for -- for discussions

11:04 2   amongst employees?

11:04 3   A.   It was -- Well, our -- on Power

11:04 4   domain but it would be so it would on -- on the

11:04 5   servers.

11:04 6   Q.   For instance, did you use Outlook?

11:04 7   A.   Yes. Some people used Outlook,

11:04 8   some people used different services, but Outlook

11:04 9   was the primary -- primary service. Each

11:04 10   individual had their own E mail platform. For

11:04 11   example, I used Web-based E mail where I received

11:04 12   everything in my Yahoo E mail.

11:04 13   Q.   Were the E mails sent intra--

11:04 14   intra, I-N-T-R-A company so that they only went to

11:04 15   other employees in the company?

11:04 16   A.   They would go to -- It was not --

11:05 17   It would go to whoever was copied on the E mail.

11:05 18   Q.   Were those E mails backed up

11:05 19   anywhere?

11:05 20   A.   I believe they were backed up on

11:05 21   our servers.

11:05 22   Q.   Okay. And those are the servers

11:05 23   that were hosted by IWEB and Amazon.com.

11:05 24   A.   That's correct.

11:05 25   Q.   And is that backup information

11:05 1   still available to you through your site that

11:05 2   you're currently hosting on a monthly basis?

11:05 3   A.   Everything was instructed to be

11:05 4   copied there, and so I'm assuming that it's all

11:05 5   there. I haven't looked at it individually

11:05 6   personally, but I made a backup of everything.

11:05 7   Q.   Now, you also said some

11:05 8   documentation relating to coding was maintained in

11:05 9   text form?

11:05 10   A.   Yes. Some products -- Some

11:05 11 products -- Text form meaning an electronic file.

11:05 12 If -- If a product required -- Usually, in the

11:05 13 early stages of a -- of a product, later on, as it

11:05 14 evolved, a lot was done informally by E mails.

11:05 15   Q.   And those text files are they also

11:06 16 still available to you?

11:06 17   A.   They would be in my E mailbox if

11:06 18 they -- if they're available.

11:06 19   MR. COOPER: I can do this one of

11:06 20 two ways. The Northern District typically --

11:06 21 there's a rule that says we're to try and do depo

11:06 22 exhibits consecutively. I believe the last one

11:06 23 ended on six. We can start at seven. However, if

11:06 24 there's any concern about confusion with that, I

11:06 25 often just start, like, say at 100 so we'd have

01:30 1   where the conversations on those existed, but yes.

01:30 2   There are specific scripts like Get photo that, you

01:30 3   know, that are -- that are -- that we've discussed

01:30 4   and talked about and that are available. I mean,

01:30 5   if you want to prove that we were -- we were

01:30 6   getting photos or getting contents, I think we've

01:30 7   said it many times that we are -- that's what our

01:30 8   -- that's what our users are asking us to do to

01:30 9   access their information.

01:31 10   Q.   All right. But that code was not

01:31 11   produced by you. Correct?

01:31 12   MR. BURSOR: We would stipulate

01:31 13   the source code has not been produced.

01:31 14   A.   Yeah, we've already stipulated

01:31 15   it's not been produced.

01:31 16   Q.   Nor -- And the only technical

01:31 17   documentation you suggest was developed in

01:31 18   conjunction with that source code are the two

01:31 19   documents I put in front of you, 100 and 101?

01:31 20   A.   This is the foundation of how

01:31 21   every PowerScript is created.

01:31 22   Q.   Right. And you indicated there

01:31 23   were 100 employees at Power at the height of its --

01:31 24   A.   That's correct. Yes.

01:31 25   Q.   -- operation?

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03:44 1   other priorities obviously before that.

03:44 2   Q.   At any time, do you recall Power

03:44 3   expending revenue for marketing surveys to see what

03:44 4   -- what features that users of the Power site might

03:45 5   like?

03:45 6   A.   No, we didn't. We already -- We

03:45 7   -- We didn't spend money to do marketing surveys.

03:45 8   We looked -- We had a lot of -- We had enough data

03:45 9   from our current users of what was working and we

03:45 10   looked at the sites. We didn't really get to that

03:45 11   point. We turned on just a basic test of Facebook,

03:45 12   as I said, for a few weeks. We didn't even get to

03:45 13   that point where they had -- were able to implement

03:45 14   all the next generation of features.

03:45 15   Q.   Do you have a recollection how

03:45 16   fast after its creation Power got to 100 employees?

03:45 17   A.   Yeah. In about one year. There

03:45 18   were about a hundred employees grown in a year. In

03:45 19   the year of 2007 from the -- basically from the

03:45 20   beginning to the end, essentially we grew to -- we

03:45 21   added about a hundred employees.

03:45 22   Q.   At the time Facebook launched, did

03:45 23   you still have about 100 employees?

03:45 24   A.   When Facebook launched we had

03:45 25   about 100 employees. That's correct.

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04:39 1   on the top of Exhibit Number 106?

04:39 2   A.   Yes.

04:39 3   Q.   Do you see it's January 13, 2009?

04:39 4   A.   Yes.

04:39 5   Q.   As of January 13, 2009, did Power

04:39 6   still have the ability to locate a script that was

04:39 7   used in conjunction with the launch promotion?

04:39 8   A.   If it existed, yes.

04:39 9   Q.   Do you know if at any time Power

04:39 10   had in place what is known as a litigation hold

04:39 11   instructing employees not to destroy documents

04:39 12   after this case was filed?

04:39 13   A.   We never -- We didn't destroy any

04:39 14   documents after that -- anything -- destroy

04:39 15   anything after this case started.

04:39 16   Q.   Then does that mean the

04:39 17   PowerScript should still exist?

04:39 18   A.   What I know is PowerScripts are

04:39 19   dynamic script's that are constantly updated, so I

04:40 20   don't know what exists for this.

04:40 21   Q.   If you go back to Exhibit 106 --

04:40 22   First of all, was any instruction ever given to

04:40 23   employees not to destroy any documentation relating

04:40 24   to the Facebook program?

04:40 25   A.   Not to -- We don't -- It's not our

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04:40 1   standard practice to destroy anything, so there's

04:40 2   not -- Since we don't actively destroy something,

04:40 3   there's no need to tell them not to destroy it. We

04:40 4   don't have any policy for destroying -- destroying

04:40 5   our documents.

04:40 6   Q.   And that includes your

04:40 7   PowerScripts?

04:40 8   A.   Well, PowerScripts, I believe, are

04:40 9   dynamic things. There was no policy saying change

04:40 10   -- preserve an earlier version of that. I don't

04:40 11   know how the -- The PowerScripts are like HTML

04:40 12   changes. They're very similar to making an HTML

04:40 13   change.

04:40 14   Q.   Do you know when the promotion

04:40 15   shown on Exhibit 103 exist -- when it lasted from?

04:41 16   A.   That lasted from December of 2008

04:41 17   -- Was that eight? Yes. December of 2008 until

04:41 18   2000 -- I guess -- like the -- January -- Well,

04:41 19   Facebook -- It lasted well beyond Facebook, so it

04:41 20   probably lasted until about March or April, but

04:41 21   Facebook was only alive for four weeks, five weeks.

04:41 22   Q.   I'm sorry. At that time in that

04:41 23   timeframe is when Power was sued by Facebook.
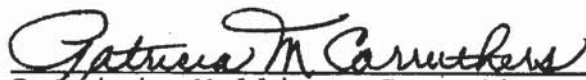
04:41 24   Correct?

04:41 25   A.   That's correct.

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C E R T I F I C A T I O N

I, PATRICIA MULLIGAN CARRUTHERS, a
Certified Shorthand Reporter and Notary Public of
the State of New Jersey and a Notary Public of the
State of New York, do hereby certify that prior to
the commencement of the examination the witness was
sworn by me to testify as to the truth, the whole
truth, and nothing but the truth.

I do further certify that the foregoing is
a true and accurate transcript of the testimony as
taken stenographically by and before me at the
time, place, and on the date hereinbefore set
forth.

I do further certify that I am neither of
counsel nor attorney for any party in this action
and that I am not interested in the event nor
outcome of this litigation.

_____
Patricia Mulligan Carruthers, CSR
Certificate No. XI00780
Notary Public of the State of New York
Notary Public of the State of New Jersey

Dated: JULY 27, 2011

My commission expires October 28, 2015   (N.J.)
My commission expires December 21, 2013   (N.Y.)

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